IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.268 OF 1997
IN
CHAMBER SUMMONS NO.379 OF 1995
IN
SUIT NO.1077 OF 1990

Bhavesh Kumar J. Bhatt .. Appellant
Versus
Cyrus N. Baxter & Ors. .. Respondents

Ms.Neeta Parikh for appellant
Mr.Presswalla i/b. M/s.Mulla & Mulla CBC for respondents.

CORAM : Dr.S.RADHAKRISHNAN, AND
S.C.DHARMADHIKARI, JJ.
DATE : 3rd October, 2005.

P.C.

. Heard learned Counsel for appellant and respondents. By this appeal the appellant is challenging the order dated 23rd December 1996 passed by the learned Single Judge in chamber summons No.379 of 1995, whereby the learned Single Judge has dismissed the said chamber summons. By the said chamber summons, the appellant being original plaintiff had sought to claim damages in addition to the relief of specific performance which was sought in the original suit. We have perused the affidavit in support seeking such an amendment.

2. The learned Counsel appearing on behalf of appellant points out that even assuming that the contract were not allowed to be specifically performed, the appellant should be entitled to

claim compensation in the alternative. Learned Counsel for respondent invites our attention to section 21 of the Specific Relief Act, 1963 which reads as under:-

> "21. Power to award compensation in certain cases :- (1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.
>
> (2) If, in any such suit, the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly,

(3) If, in any such suit, the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly;

(4) In determining the amount of any compensation awarded under this section, the Court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872);

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint"

3. Mr.Presswalla for respondent No.1 contends that the very relief claimed in the suit by way of specific performance itself cannot be granted as the agreement was for contract of personal services, which cannot be specifically enforced. Over and above, learned Counsel for respondents also submits that at this belated stage appellant ought not to have been permitted to claim damages. The same would be clearly barred by law of limitation.

4. Having regard to the facts and circumstances, especially the provisions of Section 21 of the Relief Act, as aforementioned, we allow the appeal whereby the chamber summons is made absolute in terms of prayer clause (a). Amendments to be carried out within a period of four weeks from today. Respondent No.1 is at liberty to file a detailed written statement within a period of six weeks thereafter. It is

made clear that the issue raised by the respondent with regard to limitation as well as maintainability of the claim are expressly kept open. Appeal is accordingly allowed and stands disposed of.

(Dr.S.RADHAKRISHNAN, J)

(S.C.DHARMADHIKARI, J)